

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

### REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

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The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

**§1.0 All specified providers, receiving funds under this Plan, shall maintain written policies, procedures, and materials concerning advance directives to ensure compliance with the law. All providers must:**

- A. give written information to all adults (as defined by the Code of Virginia §54.1-2981 et seq., receiving medical care concerning their rights under state law to:
  - 1. make decisions concerning their medical care,
  - 2. accept or refuse medical or surgical treatment, and
  - 3. formulate advance directives, e.g., living wills or durable powers of attorney for health care.
- B. provide written information to all adults on their policies concerning implementation of these rights;
- C. document in the individual's medical record whether he has executed an advance directive;
- D. not condition providing care or otherwise discriminate against an individual based on whether he has executed an advance directive;
- E. ensure compliance with the requirements of state law concerning advance directives; and
- F. provide for educating staff and the community on advance directives.

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**§2.0 Providers shall give to each adult patient information concerning advance directives according to the following:**

- A. Hospitals shall provide such information at the time of the individual's admission as an inpatient.
- B. Nursing facilities shall provide such information at the time of the individual's admission as a resident.
- C. Providers of home health care or personal care services shall provide such information in advance of the individual's coming under the care of the provider.
- D. Hospice programs shall provide such information at the time of the initial receipt of hospice care by the individual.
- E. A health maintenance or health insuring organization shall provide such information at the time the individual enrolls or reenrolls with the organization. If such organization maintains more than one record for its enrollees, it must document all medical records.

**§3.0 Advance directives for incapacitated individuals.** To the extent that a facility or provider issues materials about policies and procedures to the families or surrogates or other concerned persons of the incapacitated patient in accordance with state law, the facility or provider shall also provide information concerning advance directives. Such provision of information to families or surrogates shall not relieve the facility or provider of the requirement to provide this information to the patient once he is no longer incapacitated.

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- §4.0 Previously executed advance directives.** When the patient or a relative, surrogate or other concerned or related individual presents the facility or provider with a copy of the individual's advance directive, the facility or provider must comply with the advance directive including recognition of the power of attorney, to the extent allowed under state law. Absent contrary state law, if no one comes forward with a previously executed advance directive and the patient is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility or provider must note in the individual's medical record that the individual was not able to receive such information and was unable to communicate whether an advance directive existed.
- §5.0 Conscientious objection by providers.** Nothing in this section shall be construed to prohibit the application of a state law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.